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September 19, 1994

PR 94-105

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: State Petitions to Extend Rate Regulation of Commercial Mobile Services
PR File Nos. 94-SP1, 94-SP2, 94-SP3, 94-SP4, 94-SP5, 94-SP6, 94-SP7, 94-SP8

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Comments in the above-referenced proceeding.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,

Elizabeth R. Sachs

ERS:cls

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	PR File No. 94-SP1
	)	PR File No. 94-SP2
State Petitions to Extend Rate	)	PR File No. 94-SP3
Regulation of Commercial Mobile	)	PR File No. 94-SP4
Services	)	PR File No. 94-SP5
	)	PR File No. 94-SP6
	)	PR File No. 94-SP7
	)	PR File No. 94-SP8

PR 94-105

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: _____

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September 19, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the Public Utilities Commission, State of Hawaii, for Authority to Extend its Rate Regulation of Commercial Mobile Services in the State of Hawaii	)	PR File No. 94-SP1
Petition to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services of the Arizona Corporation Commission	)	PR File No. 94-SP2
Petition of the State of California and the Public Utilities Commission of the State of California To Retain State Regulatory Authority Over Intrastate Cellular Service Rates	)	PR File No. 94-SP3
Petition of the Connecticut Department of Public Utility Control To Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut	)	PR File No. 94-SP4
Petition on Behalf of the Louisiana Public Service Commission for Authority To Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana	)	PR File No. 94-SP5
Petition to Extend Rate Regulation of the Public Service Commission, State of New York	)	PR File No. 94-SP6
Statement of the Public Utilities Commission of Ohio's Intention To Preserve Its Right for Future Rate and Market Entry Regulation of Commercial Mobile Services	)	PR File No. 94-SP7
State Petition for Authority to Maintain Current Regulation of Rates and Market Entry (Section 20.12) by the State Public Service Commission of Wyoming	)	PR File No. 94-SP8

PR94-105

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	PR File No. 94-SP1
	)	PR File No. 94-SP2
State Petitions to Extend Rate	)	PR File No. 94-SP3 RM 8494-105
Regulation of Commercial Mobile	)	PR File No. 94-SP4
Services	)	PR File No. 94-SP5
	)	PR File No. 94-SP6
	)	PR File No. 94-SP7
	)	PR File No. 94-SP8

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with the Federal Communications Commission's ("FCC" or "Commission") Public Notice, respectfully submits its Comments in the above-entitled proceedings.[1/] In these proceedings, the FCC has invited comments on the Petitions filed by the States of Arizona, California, Connecticut, Hawaii, Louisiana, New York, Ohio, and Wyoming ("States"), which Petitions relate to the States' proposed regulation of intra-state Commercial Mobile Radio Service ("CMRS"). As detailed below, AMTA opposes any state regulation of the entry or rates of private land mobile systems which have been reclassified by the FCC as CMRS.

I. INTRODUCTION

AMTA is a nationwide non-profit trade association dedicated to the interests of what

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[1/] Report No. DA 94-876 (August 12, 1994).

heretofore had been classified as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as CMRS. Thus, the Association has a significant interest in these proceedings.

II. BACKGROUND

In 1993, Congress enacted legislation intended to achieve a fundamental restructuring of the land mobile telecommunications industry.[2/] The legislation recognized the increasingly significant role wireless services would play in the economic development of the nation, as well as the intensifying competition in the provision of these services to the public. The fundamental purpose of the revisions to the Act was to promote regulatory symmetry among an expanding number of wireless operators to ensure that regulatory distinctions did not confer marketplace advantages on any one class of service. Thus, Congress directed the FCC to reclassify all land mobile services as either CMRS or Private Land Mobile Radio Service ("PMRS"), in lieu of the previous private versus common carrier distinction. That reclassification was completed by the Commission recently.[3/]

Congress incorporated two other provision of particular significance in the Budget Act.

[2/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2), 107 Stat. 312, 392 (1993) ("Budget Act").

[3/] Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("2nd R&O").

First, the legislation provided a three-year transition period for those previously private land mobile systems reclassified as CMRS before they will actually be regulated as CMRS.[4/] The applicability of that transition period to all systems licensed in the service prior to August 10, 1993 was affirmed by the Commission.[5/] Second, Congress preempted any state regulation of entry or rates for CMRS services on the basis that competition would adequately protect the interests of subscribers to such systems, as well as to ensure that similar services are accorded similar regulatory treatment and to avoid unnecessary regulatory burdens.[6/] However, the legislation also included a provision whereby states may petition the Commission to retain or acquire authority to impose rate and/or entry regulation under certain conditions. The FCC subsequently adopted rules governing the process for securing such authority. 47 C.F.R. § 20.13.

A state seeking to retain its authority or to be granted authority to regulate CMRS rates has the burden of showing by demonstrative evidence either that (i) market conditions in the state for CMRS do not adequately protect subscribers from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) that those same market conditions exist and a substantial portion of the CMRS service subscribers in the state or a specified geographic area have no alternative means of obtaining basic telephone service. 47 C.F.R. § 20.13(a)(1) The

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[4/] Budget Act at § 6002(c)(2)(B). Some small number of previously private land mobile systems that meet the FCC's definition of CMRS were not authorized prior to the enactment date of the legislation and, therefore, are not entitled to the transition period. These systems will be competing, not only with other CMRS services, but with other functionally equivalent systems which simply happened to have been licensed by the Commission before that deadline.

[5/] 2nd R&O at ¶ 281.

[6/] 2nd R&O at ¶ 250.

Commission also identified evidence which would be considered relevant to support such a showing which included, but was not limited to, the following:

(1) The number of CMRS providers in the state and the type of service provided as well as the period of time such services has been provided in the state.

(2) The number of customers that are served by each CMRS provider, trends in the customer base, and annual revenues and rates of return for each CMRS provider.

(3) Rate information for each CMRS provider.

(4) An assessment of the extent to which the services of the CMRS provider proposed to be regulated, are substitutable for the services offered by other carriers.

(5) The opportunity for new providers to enter the market and an evaluation of the barriers to entry.

(6) Specific allegations of fact concerning anti-competitive or discriminatory behavior by CMRS providers in the state.

(7) Evidence, information and analysis demonstrating with particularity instances in which CMRS services imposed systematic unjust and unreasonable rates or rates that are unjust or unreasonably discriminatory.

(8) A showing of customer satisfaction or dissatisfaction with services provided.

If a state that regulated rates for CMRS services as of June 1, 1993, files a petition to continue to do so, the existing regulations are automatically continued in effect until the FCC acts on the petition which it must do within twelve months. 47 C.F.R. § 20.13(b). The instant Petitions were filed by the States in accordance with these provisions of the FCC rules.

III. DISCUSSION

Federal preemption of state rate and entry regulation was an integral aspect of Congress'

overall restructuring of the land mobile industry. A fundamental premise of the decision to replace the long-standing private versus common carrier delineation with the CMRS/PMRS distinction was a determination that a variety of services traditionally classified as private or common carrier were, or had the potential to become, substantially similar to one another in terms of service offerings and subscribers.[7/] To the extent that rate and entry regulation have been needed to substitute for competition in the less than fully competitive environment which has characterized certain common carrier land mobile services, most notably cellular service, such oversight should become unnecessary as new entrants compete in the wireless marketplace. By contrast, in the restructured CMRS environment as in the traditional private land mobile industry over which states have never had rate or entry regulatory authority, robust competition rather than government dictates were assumed to be sufficient to protect subscriber interests.

Thus, Congress elected to preclude state regulation of CMRS, except in carefully circumscribed instances where a compelling showing could be made that market conditions could not protect consumers adequately. Each of the States identified above has endeavored to make such a showing. However, a review of these Petitions reveals that the duopoly cellular service uniquely is the actual focus of their concerns. They are, for the most part, silent as to a need to continue regulating or initiate regulation of the rates of other common carrier services over which they traditionally have had jurisdiction. They are entirely silent regarding an intention to include reclassified private land mobile services within their regulatory frameworks. AMTA believes that result is dictated by law and fully consistent with the public interest.

[7/] AMTA has previously opposed what it believes to be the overly broad definition of CMRS adopted by the FCC. See AMTA Petition for Reconsideration, GN Docket 93-252, filed May 19, 1994.

As noted previously, heretofore private land mobile systems which have been reclassified as CMRS are entitled to a three-year transition period which will expire on August 10, 1996. Until that date, they are not eligible to be made subject to regulations applicable to CMRS services. Rather, the transition period is clearly intended to provide a reasonable timeframe during which reclassified systems can prepare for their new status -- one which will entail both regulatory and marketplace revisions. Permitting previously impermissible state regulation of these services during this period would have subverted the intent of Congress in formulating an appropriate transition path for them. These services were not subject to state regulatory jurisdiction before being reclassified as CMRS and may not be so regulated until the three-year transition period has expired.

Further, the public interest does not demand state oversight of the rates charged by reclassified CMRS providers. Rate regulation, whether at the state or federal level, is an inferior, but sometimes necessary, substitute for vigorous competition in an environment in which an entity(s) has market power. It is appropriate, therefore, that a showing of marketplace inadequacies must accompany any proposal to permit state regulation of non-cellular CMRS services such as those provided by AMTA's members.[8/] No such showings have been or could be made given the highly competitive nature of the reclassified private carrier industry. Moreover, the substantial headstart and spectrum allocations enjoyed by the two cellular providers in each market guarantee them a position in the CMRS marketplace that new entrants will be forced to surmount. The need to compete with a well-entrenched cellular duopoloy will

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[8/] Each of these Petitions includes a showing as to the need for continued or initial rate regulation of cellular service.

dictate subscriber-oriented pricing schemes and prompt response to consumer demand for other CMRS services, Under these circumstances, state regulation of non-cellular CMRS rates will impede, not enhance, competition.

IV. CONCLUSION

The instant Petitions do not seek authority to begin regulating the rates of private land mobile systems that have been reclassified as CMRS. The showings proffered in support of these Petitions are devoid of any evidence that market conditions in that segment of the wireless CMRS industry do not adequately protect subscribers from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Similarly, the Petitions do not claim that these reclassified private land mobile services provide the sole means of obtaining basic telephone service in any of these states or specific geographic areas within them. Thus, it is evident that the Commission could not permit a state to begin regulating the rates of such systems in accordance with the agency's enabling statute or its recently-adopted regulations.

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete these proceedings, consistent with the recommendations detailed herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 19th day of September, 1994, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

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* Via Hand-Delivery